

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TROY PHILIPS,

Plaintiff,

-against-

KEVIN CHEVERKO, COMMISSIONER OF
CORRECTIONS; CORRECTIONAL OFFICER
DONNY SMITH, SHIELD NO. 42062;
CORRECTIONAL OFFICER OSCAR REBOLLO,
SHIELD NO. 48379; CORRECTIONAL OFFICER
SALVATORE FICAROTTA, SHIELD NO. 11358;
CORRECTIONAL OFFICER MICHAEL
SIMMONS, SHIELD NO. 32137;
CORRECTIONAL OFFICER LARRY VASQUEZ,
SHIELD NO. 54971; CORRECTIONAL OFFICER
RAYMOND VALLES, SHIELD NO. 33013;
CORRECTIONAL OFFICER JOHN STEVENSON,
SHIELD NO. 39431; CORRECTIONAL OFFICER
DAVID VASCONEZ, SHIELD NO. 48407;
CORRECTIONAL OFFICER MICHAEL
CAROZZA, SHIELD NO. 54992; CAPTAIN
THOMAS ABRAMS,

Defendants.

19-CV-2019 (CS)

AMENDED ORDER OF SERVICE

CATHY SEIBEL, United States District Judge:

Plaintiff Troy Philips, currently incarcerated in Cocksackie Correctional Facility, is proceeding *pro se* and *in forma pauperis*. By order dated April 30, 2019, the Court directed the Clerk of Court to: (1) add John/Jane Doe 1 – 10 as Defendants under Fed. R. Civ. P. 21; and (2) issue summonses and complete the USM-285 forms with the addresses for County Sheriff George Longworth and Commissioner of Corrections Kevin Cheverko and deliver all documents necessary to effect service to the U.S. Marshals Service. The order further directed: (1) the Westchester County Attorney to ascertain the identities and badge numbers of the John/Jane Doe Defendants, and the addresses where these Defendants may be served; and (2) Plaintiff to amend

his complaint, within thirty days of receiving the information, naming the John/Jane Doe Defendants.

By letter dated June 28, 2019, the Westchester County Attorney complied with the Court's April 30, 2019 order and provided the requested information. (ECF No. 9.) Plaintiff filed an amended complaint on August 13, 2019, naming as Defendants Kevin Cheverko, Commissioner of Corrections; Correctional Officer Donny Smith, Shield No. 42062; Correctional Officer Oscar Rebollo, Shield No. 48379; Correctional Officer Salvatore Ficarotta, Shield No. 11358; Correctional Officer Michael Simmons, Shield No. 32137; Correctional Officer Larry Vasquez, Shield No. 54971; Correctional Officer Raymond Valles, Shield No. 33013; Correctional Officer John Stevenson, Shield No. 39431; Correctional Officer David Vasconez, Shield No. 48407; Correctional Officer Michael Carozza, Shield No. 54992; and Captain Thomas Abrams. (ECF No. 16).

The Court issued an order of service on August 21, 2019, directing the Clerk of Court to issue summonses and complete the USM-285 forms for the Defendants named in the amended complaint, but the attached list of Defendants to be served included only the Defendants named in the original complaint. The Court therefore issues this amended order of service, again directing service on the Defendants named in Plaintiff's amended complaint and attaching the complete list of Defendants to be served. The United States Marshal Service executed service on Kevin Cheverko on June 14, 2019. (ECF No. 13.) Because Plaintiff did not name County Sheriff George Longworth as a Defendant in the amended complaint, he is no longer a party to this action.

DISCUSSION

A. Service on Correctional Officer Donny Smith, Shield No. 42062; Correctional Officer Oscar Rebollo, Shield No. 48379; Correctional Officer Salvatore Ficarotta, Shield No. 11358; Correctional Officer Michael Simmons, Shield No. 32137; Correctional Officer Larry Vasquez, Shield No. 54971; Correctional Officer Raymond Valles, Shield No. 33013; Correctional Officer John Stevenson, Shield No. 39431; Correctional Officer David Vasconez, Shield No. 48407; Correctional Officer Michael Carozza, Shield No. 54992; and Captain Thomas Abrams

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on Defendants Correctional Officer Donny Smith, Shield No. 42062; Correctional Officer Oscar Rebollo, Shield No. 48379; Correctional Officer Salvatore Ficarotta, Shield No. 11358; Correctional Officer Michael Simmons, Shield No.

32137; Correctional Officer Larry Vasquez, Shield No. 54971; Correctional Officer Raymond Valles, Shield No. 33013; Correctional Officer John Stevenson, Shield No. 39431; Correctional Officer David Vasconez, Shield No. 48407; Correctional Officer Michael Carozza, Shield No. 54992; and Captain Thomas Abrams through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of these Defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these Defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff.

The Clerk of Court is further instructed to issue summonses and complete the USM-285 forms with the addresses for Correctional Officer Donny Smith, Shield No. 42062; Correctional Officer Oscar Rebollo, Shield No. 48379; Correctional Officer Salvatore Ficarotta, Shield No. 11358; Correctional Officer Michael Simmons, Shield No. 32137; Correctional Officer Larry Vasquez, Shield No. 54971; Correctional Officer Raymond Valles, Shield No. 33013; Correctional Officer John Stevenson, Shield No. 39431; Correctional Officer David Vasconez, Shield No. 48407; Correctional Officer Michael Carozza, Shield No. 54992; and Captain Thomas Abrams and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is directed to docket this as a “written opinion” within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: August 22, 2019
White Plains, New York

A handwritten signature in black ink, reading "Cathy Seibel", is written over a horizontal line.

CATHY SEIBEL
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Correctional Officer Donny Smith, Shield No. 42062
Westchester County Jail
10 Woods Road
Valhalla, New York 10595
2. Correctional Officer Oscar Rebollo, Shield No. 48379
Westchester County Jail
10 Woods Road
Valhalla, New York 10595
3. Correctional Officer Salvatore Ficarotta, Shield No. 11358
Westchester County Jail
10 Woods Road
Valhalla, New York 10595
4. Correctional Officer Michael Simmons, Shield No. 32137
Westchester County Jail
10 Woods Road
Valhalla, New York 10595
5. Correctional Officer Larry Vasquez, Shield No. 54971
Westchester County Jail
10 Woods Road
Valhalla, New York 10595
6. Correctional Officer Raymond Valles, Shield No. 33013
Westchester County Jail
10 Woods Road
Valhalla, New York 10595
7. Correctional Officer John Stevenson, Shield No. 39431
Westchester County Jail
10 Woods Road
Valhalla, New York 10595
8. Correctional Officer David Vasquez, Shield No. 48407
Westchester County Jail
10 Woods Road
Valhalla, New York 10595
9. Correctional Officer Michael Carozza, Shield No. 54992
Westchester County Jail
10 Woods Road
Valhalla, New York 10595

10. Captain Thomas Abrams
Mid-State Correctional Facility
9005 Old River Road
P.O. Box 216
Marcy, New York 13403-0216